

BEFORE THE INVESTIGATIVE PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE  
HOWARD C. BERMAN, JQC NO.  
00-211

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CASE NO. SC00-2491

**MOTION TO DISCLOSE EXCULPATORY EVIDENCE  
AND STATEMENTS OF WITNESSES**

Judge Howard C. Berman, by and through undersigned counsel, moves for an order compelling the Judicial Qualifications Commission ("JQC") to disclose exculpatory evidence and witness statements, based on the following:

1. It has come to the attention of Judge Howard C. Berman and his attorneys that many, many interviews of individuals have been conducted by JQC Investigator Butler in reference to the allegations against Judge Berman.
2. Many of these individuals have either appeared in front of Judge Berman or have had dealings with Judge Berman and were questioned as to any inappropriate comments or conduct that may have occurred, and the individuals have informed Investigator Butler that there has been no inappropriate conduct or language, and, in fact, that Judge Berman is an excellent judge.
3. The JQC has listed individuals who may be witnesses against Judge Berman who have made allegations and negative comments against Judge Berman.

4. It is further believed that Investigator Butler has spoken to individuals who have provided information that directly contradicts allegations that have been made by the complaining witnesses.

5. Based on due process of law, the JQC should be compelled to reveal this exculpatory evidence as the investigation is no longer confidential due to the filing of charges against Judge Berman.

6. Although Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 215 (1963) arose in a criminal law context, and JQC proceedings are declared to be civil, the nature of this JQC process, i.e., charges against a judge, broad range of sanctions, etc., mandate that the same principles of due process apply.

7. Rule 12 of the JQC Rules requires that the accused judge should be provided "all written statements and transcripts of testimony" of the witness. No such statements have been provided, presumably on the basis that the summaries of interviews with witnesses taken by the JQC investigator are not "written statements." This appears contradictory to the principle that an accused judge should have full access to the evidence upon which formal charges are based. See In Re Graziano, 696 So. 2d 744 at 751 (Fla. 1997).

WHEREFORE, Judge Berman seeks an order compelling the JQC to disclose exculpatory evidence.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been  
furnished by U.S. Mail to the persons on the attached Service List this \_\_\_\_ day of July, 2001.

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